

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANK FISCHER, an individual,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:05-cv-00763-DRB
)	
SYSCO FOOD SERVICES OF)	
CENTRAL ALABAMA, INC., et al.,)	
)	
Defendants.)	

MOTION TO DISMISS

COMES NOW the Defendant Sysco Food Services of Central Alabama, Inc. (hereinafter "Sysco") and hereby moves this Court to dismiss this matter, pursuant to Federal Rules of Civil Procedure 37(b) and 41(b), based upon the Plaintiff's failure to comply with the February 24, 2005 Order requiring the Plaintiff to respond to Sysco's written discovery request and provide initial disclosures by March 10, 2006. As grounds therefore, Sysco states the following:

1. On February 23, 2006, Sysco filed a Motion to Compel.
2. On February 24, 2006, the Court ordered Plaintiff to respond to the Defendant's written discovery and give initial disclosures by March 10, 2006.

3. As of the date of the filing of this motion, Plaintiff has not complied with this Court's Order.

4. Rule 41(b) of the Federal Rules of Civil Procedure provides for the dismissal of an action for failure to prosecute and failure to comply with an order of the Court.

5. Federal Rule of Civil Procedure 37(b)(2)(C) allows the Court to dismiss an action or proceeding or any part thereof and render a judgment by default against a disobedient party, as a sanction for failure to comply with an order regarding discovery.

6. The Plaintiff's claims against Sysco are due to be dismissed with prejudice for the failure to comply with the Court's Order.

WHEREFORE, PREMISES CONSIDERED, Sysco respectfully requests the Court to dismiss the action with prejudice.

s/William D. Smith, Jr.
William D. Smith, Jr.
ASB-2906-T74W
Attorney for Defendant
Sysco Food Services
of Central Alabama, Inc.
STARNES & ATCHISON LLP
100 Brookwood Place, 7th Floor
P. O. Box 598512
Birmingham, Alabama 35259-8512

(205) 868-6000
(205) 868-6099 Facsimile
wsmith@starneslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on March ____, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Davis L. Middlemas, Esq.
HEBSON & SLATE
3120 AmSouth/Harbert Plaza
1901 6th Avenue North
Birmingham, Alabama 35203

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

s/William D. Smith, Jr.

William D. Smith, Jr.
ASB-2906-T74W
Attorney for Defendant
Sysco Food Services
of Central Alabama, Inc.
STARNES & ATCHISON LLP
100 Brookwood Place, 7th Floor
P. O. Box 598512
Birmingham, Alabama 35259-8512
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wsmith@starneslaw.com